

Town of Scarborough

Zoning Board of Appeals

January 12, 2009

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (November 18, 2009)
4. Appeals
 - a. Appeal No. 2509 – A Practical Difficulty Variance Appeal by Donald and Susan Hamill, 3 Bay Street, Assessor’s Map U23 Parcel 59, to demolish and reconstruct a house within the same footprint with non-conforming setbacks in the R-4A Zone
 - b. Appeal No. 2512 – A Special Exception Appeal by Mary Meuse, 95 Two Rod Road, Assessor’s Map R40 Parcel 1A, to bake goods at her home as a Home Occupation in the R-2 Zone
 - c. Appeal No. 2513 – A Limited Reduction of Yard Size Appeal by Elizabeth Chase, 131 Spurwink Road, Assessor’s Map R99 Parcel 8, to construct a garage addition 48 feet from the front property line in the R-F Zone
 - d. Appeal No. 2514 – A Practical Difficulty Appeal by Allen and Kathleen Dillaire, 36 Pearl Street, Assessor’s Map U2 Parcel 10, to construct a second story addition 12 feet from the front property line and 10.2 feet from the left side property line in the R-4 Zone
 - e. Appeal No. 2517 – A Practical Difficulty Appeal by Jim and Ann Hancock, 47 Old Neck Road, Assessor’s Map U16 Parcel 36, to construct a deck, entry way and screened porch with nonconforming setbacks to the front property line in the R-2 Zone
 - f. Appeal No. 2518 – A Miscellaneous Appeal by Bob Westburg and Diane Garofalo, dba Higgins Beach Inn, 34 Ocean Avenue, Assessor’s Map U2 Parcel 171, to demolish a portion of the kitchen and reconstruct a larger kitchen and to construct a deck in the R-4 Zone
 - g. Appeal No. 2519 – A Practical Difficulty Variance by the Higgins Beach Inn, 34 Ocean Avenue, to construct a deck 12 feet from Ocean Avenue and 11 feet from Greenwood Avenue in the R-4 Zone
 - f. Appeal No. 2486 and 2487 – Extension of a Limited Reduction of Yard Size Appeal and a Variance Appeal by Eralda Adams, 7 Virdap Street, Assessor’s Map U1 Parcel 51, to construct a home 20 feet from the front property line in the R-4 Zone and 25 feet from the edge of the resource in the Shoreland Zone
 - g. Appeal No. 2520 – A Special Exception Appeal by David and Pamela Kane, 11 Independence Way, Assessor’s Map R13 Parcel 4, to create an Accessory Unit above their garage in the R-F Zone
 - h. Appeal No. 2521 – A Practical Difficulty Appeal by Joseph Satlak, 2 East Grand Avenue, Assessor’s Map U22 Parcel 111, to construct a third floor 5.6 feet from the rear left side line in the R-4 Zone

Town of Scarborough

Zoning Board of Appeals

January 12, 2009

MINUTES

Members Present

Staff

Mr. Blaise
Mr. Crockett
Mr. Loisel
Mr. Maroon
Mr. Massengill
Mr. Stark

Mr. Grysk, Code Enforcement Officer
Ms. Logan, Recording Secretary

1. Call to Order

Mr. Maroon called the meeting to order at 7:05 P. M.

2. Roll Call

The Recording Secretary called the roll; all members were present.

3. Approval of Minutes (November 18, 2009)

Mr. Loisel moved to approve the minutes of November 18, 2009; Mr. Stark seconded.

Voted 4-0-1 – Mr. Blaise abstained.

4. Appeals

a. Appeal No. 2509 – A Practical Difficulty Variance Appeal by Donald and Susan Hamill, 3 Bay Street, Assessor’s Map U23 Parcel 59, to demolish and reconstruct a house within the same footprint with non-conforming setbacks in the R-4A Zone

Ms. Susan Hamill explained that at the November 2009 meeting the Board asked for additional information. She stated that the existing home was in need of a large amount of work to bring it into conformance with the codes; she stated that they wanted to build green and handicap accessible for her mother. Ms. Hamill stated that they would build on the same footprint, expand the second story and relocate the exterior stairway in the rear and create a wheelchair access. She stated that there would be no additional lot coverage. Ms. Hamill stated that she had presented the requested front and side elevations of the building. She noted that the cost of renovation would be more than rebuilding.

Mr. Maroon and Ms. Hamill addressed the criteria as presented in writing. She stated that they would need a Permit by Rule from the DEP.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal; Mr. Maroon closed the public hearing.

To a question from Mr. Loisel, Ms. Hamill replied that there were other three story homes in the area but not on abutting lots; she stated that the house would not be massive and they would build in the same footprint.

Mr. Blaise moved to approve the appeal as presented; Mr. Stark seconded.

Voted 5-0

b. Appeal No. 2512 – A Special Exception Appeal by Mary Meuse, 95 Two Rod Road, Assessor’s Map R40 Parcel 1A, to bake goods at her home as a Home Occupation in the R-2 Zone

Ms. Meuse stated that she wanted to bake whoopie pies and a few other items for diet-restricted people and sell them wholesale to coffee shops and bed and breakfast facilities. She stated that no one would come to her home and she would have no sign; she stated that she had applied for her State license. Mr. Grysk noted that a food handlers license was needed from the Town Clerk.

Mr. Maroon and Ms. Meuse addressed the criteria as presented in writing.

To a question from Mr. Massengill, Ms. Meuse replied that she would be baking in the early morning and late afternoon. To a question from Mr. Loisel, Ms. Meuse replied that she had a standard kitchen stove. To a question from Mr. Stark, Ms. Meuse replied that no supplies were delivered.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal. Mr. Maroon closed the public hearing.

Mr. Massengill moved to approve the appeal as presented; Mr. Blaise seconded.

Voted 5-0

c. Appeal No. 2513 – A Limited Reduction of Yard Size Appeal by Elizabeth Chase, 131 Spurwink Road, Assessor’s Map R99 Parcel 8, to construct a garage addition 48 feet from the front property line in the R-F Zone

Ms. Chase noted that her lot fronted on the Rachel Carson Preserve and her garage was 48 feet from the front property line; she stated that she would like a second garage bay to match the existing façade.

Mr. Maroon and Ms. Chase addressed the criteria as presented in writing.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal. Mr. Maroon read a letter in favor of the appeal from Wayne and Jo Hight, of 137 Spurwink Road; Mr. Maroon closed the public hearing.

Mr. Chamberlain moved to approve the appeal as presented; Mr. Loisel seconded.

Voted 5-0

d. Appeal No. 2514 – A Practical Difficulty Appeal by Allen and Kathleen Dillaire, 36 Pearl Street, Assessor’s Map U2 Parcel 10, to construct a second story addition 12 feet from the front property line and 10.2 feet from the left side property line in the R-4 Zone

Mr. Walter Wilson, of The Design Company, stated that the existing one story house was built in 1949 with a 7/12 pitch roof and the appellants wanted to create better bedrooms by constructing a second story on the existing building. He stated that the front of the house was 14 feet from the street and they wanted to build straight up and not change the footprint. Mr. Wilson stated that if they built on the back they would exceed the 25% lot coverage allowance and create problems for the abutters. He stated that a new

foundation and an addition were built in 2001 and the building was structurally sound. Mr. Grysk stated that this was the best alternative for the site.

Mr. Wilson and Mr. Maroon addressed the criteria as presented in writing.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal; Mr. Maroon closed the public hearing.

Mr. Loisel moved to approve the appeal as presented; Mr. Massengill seconded.

Voted 5-0

e. Appeal No. 2517 – A Practical Difficulty Appeal by Jim and Ann Hancock, 47 Old Neck Road, Assessor’s Map U16 Parcel 36, to construct a deck, entry way and screened porch with nonconforming setbacks to the front property line in the R-2 Zone

Mr. Alan Bartlett, contractor for the Hancocks, explained that the appellants were avid birdwatchers and would like to build a 14 foot porch facing the marsh across Old Neck Road. He stated that the porch would barely be seen by the abutters.

Mr. Maroon and Mr. Bartlett addressed the criteria as presented in writing.

Mr. Blaise noted that the appellant’s driveway was partially on the abutter’s property; Mr. Bartlett stated that the abutter was not concerned. Mr. Maroon asked why the porch could not be put on the side; Mr. Bartlett replied that they did not want to cut down the existing trees and the architect designed the porch before checking on setbacks. He stated that the side would not offer the same view of the marsh.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal; Mr. Maroon closed the public hearing.

Mr. Loisel stated that he had a problem with criteria No. 5 because granting this appeal would bring the structure out of conformance and he did not think all the alternatives had been considered. Mr. Maroon stated that this was a difficult appeal because the architect erred and they wanted the codes to come in line with the plan and that was not what the appeal process was for; he stated that the Board could table the appeal to get more information; he stated that there were other alternatives. Mr. Stark stated that the Board should see a plan showing the trees and how close they were to the house. He stated that there needed to be a reason the porch could not be built there. Mr. Maroon stated that there were issues with criteria 4 and 5.

Mr. Maroon moved to table the appeal for two months; Mr. Blaise seconded.

Voted 5-0 to table.

f. Appeal No. 2518 – A Miscellaneous Appeal by Bob Westburg and Diane Garofalo, dba Higgins Beach Inn, 34 Ocean Avenue, Assessor’s Map U2 Parcel 171, to demolish a portion of the kitchen and reconstruct a larger kitchen and to construct a deck in the R-4 Zone

Mr. Westberg stated that the existing kitchen was 14 by 25 feet with an outside addition of 12 by 15 feet which would be demolished, and which was currently used during the summer where several people worked in a small space where it was difficult to move around. He stated that they would like more space for a more efficient work area and for storage and a walk-in refrigerator; he stated that the new space

would also be better for sanitation and would enhance the workplace. Mr. Grysk noted that the kitchen would meet the required setbacks but this was an expansion of a nonconforming use.

Mr. Maroon and Mr. Westberg addressed the criteria as presented in writing.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal. Mr. Maroon read letters in favor of the appeal from Susan and Richard Napolitano, of 37 Ocean Avenue; Theodore and Angela Meserve, of 25 Houghton Street; Don and Lauraine Foley, of 31 Ocean Avenue; and Bev Bayley-Smith, of 38 Ocean Avenue. Mr. Maroon also read a letter from Roland Mercier, of 4 Kelly Lane, who had issues with noise from customers eating on the deck and from the kitchen vent. Mr. Maroon noted that the minutes of the Planning Board meeting of December 14, 2009 indicated a positive opinion with concerns about parking. Mr. Maroon closed the public hearing.

To questions from Mr. Maroon, Mr. Westberg replied that the vent did make noise but he did not know it was an issue for the neighbors; he stated that there was a sound wall and he would look into what could be done to lessen the noise from the vent. To a question from Mr. Massengill, Mr. Westberg replied that the vent was serviced annually. Mr. Stark stated that he had a problem with the noise issues. Mr. Westberg stated that he tried to mitigate any issues when he knew about them. To a question from Mr. Maroon, Mr. Grysk stated that he would be comfortable working with the appellant to mitigate the noise; he stated that an expert should measure the decibels to mitigate the noise. Mr. Massengill stated that he was satisfied as long as there was a commitment.

Mr. Loisel moved to approve the appeal for expansion of the use as presented; Mr. Blaise seconded.

Voted 5-0

g. Appeal No. 2519 – A Practical Difficulty Variance by the Higgins Beach Inn, 34 Ocean Avenue, to construct a deck 12 feet from Ocean Avenue and 11 feet from Greenwood Avenue in the R-4 Zone

Mr. Westberg stated that he would like to construct a 24 by 28 foot handicap accessible deck at the side of the inn to use for dining at the suggestion of their customers.

Mr. Maroon noted that the Planning Board had concerns about the lack of private parking for the inn. Mr. Westberg stated that he currently had 14 parking spaces directly behind the inn and 14 spaces that ran along Greenwood Avenue; he stated that the Higgins Beach Inn leased 10 spaces in the parking lot across the street for employees and that worked well because they worked during the evening when beachgoers were gone. He stated that they also had permission to use the Higgins Beach Association's lawn for parking. Mr. Westberg stated that they limited functions during the summer when there was a lot of business; he noted that a lot of his restaurant customers walked to the inn. He stated that if the Town purchased the private parking lot he would work out with the Town Manager a lease to use that parking lot; he stated that the Town did not know what would happen with the lot but the Manager was willing to work with him. He stated that he could get written permission to use the parking lots.

Mr. Maroon and Mr. Westberg addressed the criteria as presented in writing.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal; Mr. Maroon closed the public hearing.

Mr. Blaise moved to approve the appeal as presented; Mr. Massengill seconded.

Voted 5-0

f. Appeal No. 2486 and 2487 – Extension of a Limited Reduction of Yard Size Appeal and a Variance Appeal by Eralda Adams, 7 Virdap Street, Assessor’s Map U1 Parcel 51, to construct a home 20 feet from the front property line in the R-4 Zone and 25 feet from the edge of the resource in the Shoreland Zone

Mr. Jim Fisher, of Northeast Civil Solutions, stated that an ongoing court suit prohibited the appellant from starting construction and they needed an extension on their approval.

Mr. Maroon stated that his concern was that photos had been taken of the site during a storm and he wondered how the Board should deal with them. Mr. Fisher stated that the appellants were aware of the flood zone and the structure would be at least one foot above the flood plain and would be elevated. Mr. Blaise stated that photographs he took of the site on January 2 and 3, 2010 showed the water well past the property line and flowing under the fence. He stated that he measured from the edge of the water to the light pole close to the property line and there was only 50 feet of space between them. He stated that this happened often and one of his concerns was the marsh; he stated that the tides were continually changing the shoreline and the lot in question was once a lot larger than it is now and was getting smaller every year. Mr. Blaise stated that the Board was given regulations for the Shoreland Zone; he stated that he felt this Board did not do an adequate job of protecting the fragile shoreland in this case. He stated that he thought the Board got hung up on the financial aspect and lost sight of the fact that the Board’s charge was to protect the resources. Mr. Blaise stated that with this request, the Board had the opportunity to hear the issue again.

Mr. Maroon stated that because this delay was due to a law suit, he had no issue with the extension; he stated that it was up to the Board to respect the member who had further information. He stated that it was not the Board’s job to protect the Shoreland Zone and this property was not in that zone. He stated that protection of the Shoreland Zone was the focus of the DEP. Mr. Maroon noted that the photos showed many other houses under water. Mr. Loisel noted that the Zoning Board did not define where the zone begins and that was the jurisdiction of the state and federal governments. Mr. Grysk noted that the high water mark was not drawn by the state but by the specialist who worked for the appellant and could be a different line each time it was measured. Mr. Grysk stated that when the appellant returned for a building permit a new survey would have to be submitted as the high water mark was a moving target.

Mr. Maroon opened the public hearing. Ms. Suzanne Foley-Ferguson, a friend of some of the neighbors, displayed a plan of the area from the early 1900s and noted that during the 1950s this lot was listed as unbuildable. She stated that the owners purchased the site for \$1.00 so the value of the property had always been unbuildable; she listed the tax values of abutting lots. Ms. Foley-Ferguson stated that there was very little hardship when very low taxes were paid; she stated that abutters twice offered to purchase the land to preserve it. She stated that the unique circumstance was that it is unbuildable; but there was value to the land because people had offered to purchase it. Ms. Foley-Ferguson stated that Jane Waning was concerned because her house was on the property line so this house was only 10 feet from hers. She stated that the protection of the Resource Protection Zone was for safety and to take an unbuildable lot and make it buildable was in direct conflict with the Resource Zone. She urged the Board to take another look at the issues.

Mr. Maroon stated that it was not appropriate to regurgitate this appeal which had been addressed fully when it was approved in August 2009. He stated that he believed in the court system and believed that the two law suits were challenging whether the Board erred or not.

Mr. Massengill moved to approve the extension of the appeal for six months; Mr. Loisel seconded.

Voted 4-1 – Mr. Blaise opposed.

Ms. Foley-Ferguson protested that the second extension request had not been allowed a public hearing. Mr. Maroon opened the public hearing for Appeal No. 2487. Ms. Foley-Ferguson stated that the house was approved to be 10 feet from the property line, but it was her understanding that the building permit was denied. She stated that there was new information and there would be a two story house 10 feet away from a one story house. Mr. Grysk stated that when the appellant returned to the Board following tabling of the appeal, the plan showed that the reduction request had been shifted to the opposite side of the property and did not affect Ms. Waning's property. Mr. Maroon closed the public hearing.

Mr. Maroon stated that the Board should vote on each appeal so there was no confusion. Mr. Massengill moved to rescind the previous vote; Mr. Loisel seconded. Voted 5-0 to rescind.

Mr. Massengill moved to approve the extension of Appeal No. 2486; Mr. Loisel seconded.

Voted 4-0-1 Mr. Blaise opposed.

Mr. Massengill moved to approve the extension of Appeal No. 2487; Mr. Stark seconded.

Voted 4-0-1 Mr. Blaise opposed.

g. Appeal No. 2520 – A Special Exception Appeal by David and Pamela Kane, 11 Independence Way, Assessor's Map R13 Parcel 4, to create an Accessory Unit above their garage in the R-F Zone

Mr. Kane explained that they wanted to create an accessory unit over their garage. Mr. Kane and Mr. Maroon addressed the criteria; Mr. Kane stated that he had a new septic design.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal; Mr. Maroon closed the public hearing.

Mr. Blaise moved to approve the appeal as presented; Mr. Loisel seconded.

Voted 5-0

h. Appeal No. 2521 – A Practical Difficulty Appeal by Joseph Satlak, 2 East Grand Avenue, Assessor's Map U22 Parcel 111, to construct a third floor 5.6 feet from the rear left side line in the R-4 Zone

Mr. Jim Fisher, of Northeast Civil Solutions, stated that this house was built in 1929 at the corner of Pine Point Road; he stated that the lot is smaller than it was thought to be and the house is 5.6 feet from the rear property line. He stated that the appellant wanted to expand the home from two to three stories similar to other properties in the neighborhood. Mr. Fisher stated that only a small section of the house did not meet the required 15 foot setback. He stated that an easement was granted to Mr. Satlak by the abutting Beach Walk Subdivision so that nothing would be built close to his property, which created a 28 foot buffer to the property line of the other lot. Mr. Fisher noted that the required rear setback was 15.75 feet because of the height of the building.

Mr. Maroon and Mr. Fisher addressed the criteria as presented in writing.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal; Mr. Maroon closed the public hearing.

Mr. Crockett moved to approve the appeal as presented; Mr. Massengill seconded.

Voted 5-0

i. Appeal No. 2522 – A Variance Appeal by Ken and Maili Lafayette, 6 Val Terrace, Assessor’s Map U15 Parcel 156, for a second kitchen to remain in a single family house in the R-2 Zone

Mr. Lafayette explained that when they purchased the home recently there was an in-law suite behind the house but it did not connect in the middle to the main house; he stated that there were two living areas with two kitchens. He stated that they had three children and it would be difficult to live on one side of the house so they added another room that connected the two sections. He stated that the second kitchen was beautiful and would be a shame to have to pull it out and they would like to use it only for entertaining and not have a rental property. Mr. Lafayette stated that he hoped there was a way to keep the second kitchen as a wet bar situation in a single family dwelling.

Mr. Maroon stated that the zoning for this property did not allow a two family house. Mr. Grysk stated that a kitchen had been added following the issuance of the Certificate of Occupancy; he stated that there was now a Consent Agreement with the previous owner who was required to remove the kitchen and the appellant wanted to get approval to reinstall the fixtures. He stated that there was never approval for an Accessory Unit and no permits were issued.

Mr. Grysk stated that the space was more than the 750 square foot size limit so could not become an Accessory Unit unless a variance were giving on that size and that would be setting a precedent. He noted that during the 1980s there was a policy allowing an in-law apartment but with one kitchen appliance eliminated; he stated was intended for in-law use only. He stated that that policy had come back to haunt the Code Enforcement Officers and was no longer used. Mr. Grysk stated that because the area was more than 750 square feet they could not get approval for an after-the-fact Accessory Unit. He noted that the banks were getting very strict and there were three new cases of a second kitchen this week.

There was discussion regarding walling off the upstairs; Mr. Lafayette stated that if the area was walled off, it would be a different house because they would be shutting off the master bedroom.

Mr. Maroon stated that he saw no way to approve a variance and an Accessory Unit would have to be no larger than 750 square feet. Mr. Grysk stated that the Board could not condone something that was illegal to begin with; he reiterated that the former owner or contractors had never applied for permits for the kitchen. He stated that the Code Officers had to be consistent with the size of the units and anything over 750 square feet would require that the kitchen be removed. Mr. Grysk noted that the appellant was before the Board because the Consent Order required that the previous owner remove the appliances and allow the appellant to apply for an appeal. He stated that the appliances had been removed.

Mr. Maroon stated that the criteria for a variance could not be met. Mr. Grysk stated that this appeal had to be either approved or denied but could not be tabled. He stated that the appellant could reapply for an Accessory Unit. Mr. Stark stated that if the downstairs were walled off, the upstairs bedrooms could still be used. Mr. Lafayette stated that he would talk with his builder and go back to the drawing board.

Mr. Maroon moved to approve the appeal as presented; Mr. Massengill seconded.

Voted 0-5 – The appeal was denied.

5. Zoning Board Comments

There were no comments.

6. Adjournment

The meeting was adjourned at 9:40 P. M.